

**Town of Abington  
Board of Health Regulation**

**Workplace Smoking Restrictions**

**A. Statement of Purpose:**

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat, and whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers. Therefore, the Board of Health of the town of Abington recognizes the right of those who wish to breathe smokefree air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in workplaces and Public places.

**B. Authority:** This regulation is promulgated under the authority granted to the Abington Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "[b]oards of health may make reasonable health regulations."

**C. Definitions:** For the purposes of this regulation the following words shall have the meanings respectively ascribed to them by this paragraph:

**Business Agent:** Any person who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

**Board:** The Board of Health of Abington.

**Employee:** Any person who performs services for an employer in return for profit or wages.

**Employer:** A person, partnership, association, corporation, trust, or other organized group of individuals, including the Town of Abington or any agency thereof, which utilizes the services of two (2) or more employees.

**Enclosed:** A space bounded by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms and halls.

**Person:** Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the business agents or designees of any of the foregoing.

**Private Club:** A not-for-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the private club holds an alcoholic beverage license, said license shall be a "club license" or a "war veterans club license" as defined in M.G.L. Ch. 138, §12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

**Public place:** Any building, facility or vehicle owned, leased, operated or occupied by the municipality, including school buildings and grounds; any enclosed area open to the general public including, but not limited to, bars, restaurants, retail stores, retail food stores, supermarkets, libraries, museums, theaters, banks, laundromats, indoor sports arenas, auditoriums, inn/hotel/motel lobbies, private and public educational facilities, shopping malls, common areas of residential buildings, public restrooms, lobbies, staircases, halls, exits, entrance ways, elevators accessible to the public, public mass transit conveyances and indoor platforms and enclosed outside platforms, open meetings of a governmental body as defined in section 11A of chapter 30A, section 23A of chapter 39 and section 9F of chapter 34, and licensed child-care locations.

**Retail Food Store:** Any establishment commonly known as a supermarket, grocery store, bakery or convenience store, or any other establishment which offers food items to the public for off-premises consumption.

**Retail Store:** Any establishment whose primary purpose is to sell or offer for sale to consumers any goods, wares, merchandise, articles or other things.

**Retail Tobacco Store:** Any establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, which the sale of other products is merely incidental, and in which minors are prohibited from entering the establishment.

**Smoking:** Inhaling, exhaling, burning or carrying any lighted cigar, pipe, cigarette, or other tobacco product in any form.

**Town:** The Town of Abington.

**Workplace:** Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer.

**D. Smoking Prohibited:**

1. Smoking is prohibited in all workplaces and all public places.
2. It shall be unlawful for any employer or other person having control of the premises upon which smoking is prohibited by this regulation, or the business agent or designee of such person, to permit a violation of this regulation.
3. Any building owned, operated, leased or occupied by the Town, including school buildings, shall be smokefree, including a twenty (20) foot buffer zone outside of each entrance. Any vehicle or school grounds owned, operated or leased by the Town shall be smokefree.

**E. Posting notice of prohibition:**

Every person having control of premises upon which smoking is prohibited by and under the authority of this regulation shall conspicuously display upon the premises "No Smoking" signs provided by the Massachusetts Department of Public Health and available from the Abington Board of Health or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) and comparable in size to the sign provided by the Massachusetts Department of Public Health and available from the Abington Board of Health.

**F. Exceptions:**

Notwithstanding the provisions of Paragraph D of this regulation, smoking may be permitted in the following places and/or circumstances:

1. Private residences, except those portions used as a childcare or health care office when operating as such.
2. Private clubs with no employees. When a private club is open to the general public, that portion of said establishment open to the general public must be smokefree, separately enclosed, and shall have self-closing doors.
3. Designated room for patients only, in nursing homes and long term care facilities, which are ventilated to the outside.

4. Retail tobacco stores, provided such establishments prohibit entry to persons under the age of eighteen (18) at all times, and that such establishments conspicuously post signs at all entrances which warn patrons of the dangers of environmental tobacco smoke.
5. Open-air outdoor or sidewalk seating, provided that a) said area is not artificially heated or cooled; b) said area is not enclosed, except for one side which may adjoin the building; and c) the outdoor space and the indoor space are, where they adjoin, separated by a solid wall and self-closing doors such that smoke cannot enter the indoor space.

#### G. Enforcement:

1. This regulation shall be enforced by the Board of Health and its designees
2. Owners, managers, or persons having control of a workplace who observe or are made aware of a violation of this Regulation should take all reasonable steps to ensure that the violation is not repeated.

#### H. Violations:

1. It shall be the responsibility of the employer, business agent, manager or other person having control of such workplace to ensure compliance with all sections of this regulation pertaining to his/her place of business, or any person in violation of any section of this regulation. A violator of this regulation will receive a written warning and may receive:
  - a. In the case of a **first violation**, a fine of one hundred dollars (**\$100.00**).
  - b. In the case of a **second violation**, within 12 months of the first violation, a fine of two hundred dollars (**200.00**).
  - c. In the case of a **three or more violations**, within 12 months of the second or current violation, a fine of three hundred dollars (**\$300.00**) for each violation.
2. Each calendar day an employer, person, business or entity operates in violation of any provision of this regulation shall be deemed a separate violation.

#### I. Severability:

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

**J. Conflict with Other Laws or Regulations:**

Notwithstanding the provisions of the foregoing Paragraph D of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.

**K. Effective Date:**

These regulations shall be effective as of September 22, 2003.

Board member signatures

Date: 9-8-03

Ryan Brennan  
[Signature]  
[Signature]  
   
 

7/7/03

made regulation dated July 16, 2003 + July 25, 200

## **Massachusetts Smoke-Free Workplace Law and Membership Association Exemption**

The Smoke-Free Workplace Law, M.G.L. Ch. 270, §22, mandates that enclosed workplaces with one or more employees must be smoke-free. The state law's intent is to protect workers in enclosed workplaces from secondhand smoke exposure. The full text of the law and additional information (including DPH Regulation 105.CMR 661.000) are available at [www.mass.gov/dph/mfwp](http://www.mass.gov/dph/mfwp).

### **What is a membership association (private club)?**

Membership associations, frequently known as private clubs, are defined in the law as not-for-profit entities that have been established and operate for charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreational or similar purposes. Places of worship and veterans' organizations are included in the definition of membership associations for the purpose of this law.

### **When may smoking be permitted at private clubs or membership associations?**

Smoking may be permitted if the club's enclosed space is occupied solely by:

- 1) Individuals with a full membership to the association;
- 2) Salaried employees of the association;
- 3) Invited guests; and
- 4) Visiting members of an affiliate chapter or branch of a fraternal lodge organization.

### **When is a membership association considered open to the public and required to be smoke-free?**

Smoking shall be prohibited in an enclosed indoor space of a membership association when:

- 1) The association is located in a municipal-owned building;
- 2) The public is invited (*e.g. advertisements, signs, invitations*) to attend an event (*e.g. bingo in a church or private club*);
- 3) The enclosed indoor space is occupied by a non-member that is not a guest;
- 4) The enclosed indoor space is rented to the public for a fee, tickets are sold, or for any other form of compensation (*e.g. a wedding and hires a bartender, wait staff, and/or a disc jockey*); and
- 5) If a temporary, contract employee, or independent contractor is hired to perform an employed service in the enclosed indoor space (*e.g. bartender, caterer, disc jockey*).

### **Can members of the membership association smoke while the facility is open to the public?**

Only if the membership association provides a designated enclosed indoor space that is separate from the area open to the public and *"the space is restricted by the association to admit only members, the invited guest of a member, and the employees of the membership association."* The association must ensure that the public does not enter the enclosed space where smoking is permitted.

**CAUTION:** The sale of alcoholic beverages to the general public by a private membership association holding a *club* type of alcoholic beverages license violates the terms and conditions of that *club* type license and can result in suspension or revocation of that license by the local licensing authorities or the Massachusetts Alcoholic Beverages Control Commission.

### **What is a full member?**

A person whose membership entitles him/her to all privileges of a full membership of the association, and there are no differences in cost or duration of the membership then what is required in the associations charters.

### **What is an invited guest?**

Invited guests of a member must meet three conditions:

- 1) Be accompanied by a member;
- 2) The full member must remain on the premises while the guest is present; and
- 3) A guest register is signed that clearly specifies the name and address of the guest and the inviting member.

### **What is a salaried employee of the association?**

A salaried employee of a private club is a W-2 employee. However, an independent contractor, temporary employee or contract employee that is hired to work in a private club is not considered a salaried employee. As stated above, smoking is prohibited when an independent contractor, temporary employee or contract employee is present.